95-1101

Supreme Court, U.S.
FILED
DEC 28 1995
CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1996

WILLIAM P. WILSON, *Petitioner,*

v.

STATE OF WASHINGTON, *Respondent.*

APPENDIX

to the

PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING

Peter Meyers
King County Prosecutor
701 5th Avenue, #4800
Seattle, Washington 98104
(206) 296-8820
Counsel for Respondent

Joan E. Neuffer
Attorney at Law
2155 112th Avenue NE, Suite 200
Bellevue, Washington 98004
(206) 462-9394
Counsel for Petitioner

38 pp

APPENDIX
Table of Contents

Document	Appendix No.
Stipulation to Facts Sufficient, dated January 13, 1994	1
Record of Proceedings at Trial on January 13, 1994	2
Decision on RALJ Appeal, dated December 5, 1995	3
Commissioner's Ruling Denying Motion for Discretionary Review, dated April 3, 1995	4
Judge's Ruling Denying Motion to Modify, dated June 2, 1995	5
Supreme Court Commissioner's Ruling Denying Review, dated August 11, 1995	6
Supreme Court Judge's Ruling Denying Review, dated October 4, 1995	7

State of Washington
Issaquah Division
640 N.W. Gilman Blvd.
Issaquah, WA 98027
296-7688

STATE OF WASHINGTON,	)	
	)	**Case No. L098433**
Plaintiff,	)	
	)	**Stipulation to**
v.	)	**Facts Sufficient**
	)	
WILLIAM P. WILSON,	)	
	)	
Defendant.	)	
_____	)	

I am the defendant in this case. I wish to submit the case on the record. I understand that this means that the

Judge will read the police report and other material attached and, based upon that evidence the judge will decide if I am guilty of the crime(s) of **Assault 4th Degree, DV.**

I understand that, by this process, I am giving up the constitutional right to a jury trial, the right to hear and question witnesses, the right to call witnesses in my own behalf, and the right to testify or not to testify.

I understand that the maximum sentence for the crime(s) is **one year jail/$5000.00 fine.**

I have been informed and fully understand that the crime(s) with which I am charged carries a mandatory minimum sentence(s) of: **N/A,** and that the judge can impose any sentence up to the maximum, no matter what the prosecuting authority or the defense recommends.

No one has made any threats or promises to get me to submit this case other than the prosecuting authority's

promise to take the following action and/or make the following recommendations:

18 months deferred sentence, no criminal law violations, active probation with King County, Domestic Violence Counseling with Dr. Philip Cohen or another counselor recommended by him, unless not approved by Probation with good cause. If not approved, then an approved domestic violence program. Jail time suspended, $4900 fine suspended. If all conditions are fully satisfied, the case will be dismissed at the end of 18 months.

Dated this 13th day of January, 1994.

/s/ William P. Wilson
Defendant

/s/ Phillip Miller
Lawyer for Defendant

/s/ Gwynne Skinner
For the Prosecuting Attorney

/s/ Judge Rusden
Pro Tem Judge Presiding

IN THE KING COUNTY DISTRICT COURT
ISSAQUAH DIVISION

STATE OF WASHINGTON,	)	
	)	**No. L098433**
Plaintiff,	)	
	)	**RECORD OF**
vs.	)	**PROCEEDINGS**
	)	
WILLIAM P. WILSON,	)	
	)	
Defendant.	)	
	)	

RECORD OF PROCEEDINGS

Attorney for Plaintiff: **Gwynne Skinner**
Attorney for Defendant: **Phillip Miller**

Before the Honorable **James Rusden**, Judge Pro Tem.

Transcriber
Holly Benson

(Tape Number 94A08)
Judge Rusden: This is the matter of the State of Washington v. William P. Wilson cause No. 98433. I understand this matter has been resolved by stipulation is that correct?
Skinner: Yes, your Honor.
Miller: That's correct your honor. My name is Phillip **Miller,** I represent Mr. Wilson [to my] right.
Skinner: I am here representing the State of Washington.
Judge Rusden: Do you have the order to . . .
Skinner: We also ask that the Police Report be marked be and admitted to evidence.
Miller: No objection.
Judge Rusden: I have previously reviewed the police report and satisfied that there is sufficient evidence contained herein to make the finding of guilty. I have reviewed the ah,

stipulation ah, prepared by the counsel and signed by the Defendant and will prove the same. It has been the agreement of ah the parties that this sentencing of this matter be deferred for the period of 18 months based on certain conditions that are noted in the stipulation. For the record I will run through those, the court will defer the imposition of sentencing of this matter for the period of 18 months the sentence of the court is deferring is that of the 90 days jail sentence and $500 fine just so that the counsel and defendant knows though what the outside incidents of this are the conditions of the deferral of this sentence will be that the defendant pay the sum of $100.00 to include costs and assessments, that there be no violations of law during this 18 month period, that the probation department take active interest in this matter during the time of the deferred sentence.

But primarily for the purpose of reviewing what I assume is going to be a report from Dr. Phillip Cohen outlining his plan and program and unless they specifically disapprove of that plan I will make it a condition that the

deferred sentence that the defendant continue his counseling with Dr. Phillip Cohen, follow all his instructions until such time as he indicates that no further counseling is necessary. If it turns out that the probation department for some reason disapproves of this, than we will return here for review of optional counseling.

The parties have listed some higher numbers here than I announced but I would think that the certain nature of this case that the amounts that I indicated will probably be sufficient attention getting under the circumstances. Unless the State strongly feels to the contrary.
Skinner: Your Honor, the defense counsel wanted to include that portion so. . .
Miller: Simple oversight on my party on the dollar amount
Judge Rusden: I note that you indicate also that (unintelligible), was there some reason to think that Dr. Cohen was not going to be available or was that the way the program was going at this point.

Miller: We are not sure about Dr. Cohen's long term availability because we have not had an opportunity to speak with him and so that was a just to make sure that we could get someone . . .

Judge Rusden: So you could go to other counseling, that's fine, that be approved by court with same approval by probation. As noted here that the whole purpose of deferred sentence is so that this matter can be dismissed at end of the deferral period and be removed from any criminal record. So it is the responsibility of the defendant that the end of the time once these other conditions have been met, to note this up on a motion calendar so that the court can be formally advised that all conditions have been met in this matter so that it may then be dismissed. The courts dismissal is on the condition of meeting these requirements. Any other matters that need to be covered, any questions.

Skinner: No, your Honor.

Miller: No, your Honor.

Judge Rusden: I have signed the order and that will resolve this matter here today.

I certify, under penalty of perjury of the laws of the State of Washington, that the foregoing is true and correct to the best of my ability.

Dated this 31st day of April, 1994, in Bellevue, Washington.

/s/ Holly Benson
Holly Benson
Transcriber

SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

STATE OF WASHINGTON	)	
	)	**NO. 94-1-03624-2**
Plaintiff,	)	
	)	**DECISION ON**
v.	)	**RALJ APPEAL**
	)	
WILLIAM WILSON,	)	**(Clerk's Action**
	)	**Required)**
Defendant.	)	
	)	

This appeal come on regularly for oral argument on December 5, 1994, pursuant to RALJ 8.3, before the undersigned Judge of the above entitled court and after reviewing the record on appeal and considering the written and oral argument of the parties, the court holds the following:

Reasoning Regarding Assignment of Error:

The defendant did not enter into a guilty plea, but a stipulation. The court did not abuse its discretion in accepting the stipulation. Defense Counsel's representation did not give rise to a claim of ineffective assistance of counsel. The trial court's finding of guilt shall therefore be affirmed and the matter remanded for sentencing.

IT IS HEREBY ORDERED that the above cause is:
[X] AFFIRMED; [ ] REVERSED; [ ] MODIFIED;
COSTS
REMANDED to Issaquah District Court for further proceedings, in accordance with the above decision and that the Superior Court Clerk is directed to release any bonds to the Lower Court after assessing statutory Clerk's fees and costs.

Dated: 12/5/95

/s/ Ricardo S. Martinez
Superior Court Judge

Approved as to form:

/s/ Joan E. Neuffer
Counsel for Appellant (Wilson)

/s/ Nancy Zaragoza
Counsel for Respondent (Prosecutor)

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION ONE

STATE OF WASHINGTON,	)	
	)	**No. 35842-1-I**
Respondent,	)	
	)	**COMMISSIONER'S**
	)	**RULING DENYING**
vs.	)	**DISCRETIONARY**
	)	**REVIEW**
WILLIAM P. WILSON,	)	
	)	
Appellant.	)	
	)	

William Wilson seeks discretionary review of the RALJ court order affirming his conviction for fourth degree assault. The motion for discretionary review was heard on March 24, 1995.

FACTS

Wilson was charged with fourth degree assault related to a domestic dispute. He and his attorney appeared on the date set for trial. Wilson executed a "Stipulation to Facts" which provided:

> **I am the defendant in this case. I wish to submit the case on the record. I understand that this means that the judge will read the police report and other materials attached and, based upon that evidence the judge will decide if I am guilty of the crime(s) of assault fourth degree DV.**
>
> **I understand that, by this process, I am giving up the constitutional right to a jury trial, the right to hear and question witnesses, the right to call witnesses in my own behalf, and the right to testify or not to testify.**
>
> **I understand that the maximum sentence for the crime(s) is 1 year jail/$5000.00 fine.**

I have been informed and fully understand that the crime(s) with which I am charged carries a mandatory minimum sentence(s) of n/a and that the judge can impose any sentence up to the maximum, no matter what the prosecuting authority or the defense recommends.

No one has made any threats or promises to get me to submit this case other than the prosecuting authority's promise to take the following action and/or make the following recommendations: 18 months deferred sentence/no criminal law violations/active probation with King County Domestic Violence counseling with Dr. Phillip Cohen or another counselor recommended by him, unless not approved by Probation with good cause. If no approved, then an approved domestic violence program. Jail time suspended; $4900 fine suspended. If all conditions are fully satisfied, the case will be dismissed at the end of 18 months.

The trial judge did not undertake any colloquy with Wilson regarding his understanding of the stipulation. The trial court considered the police reports and determined that they were sufficient to support a finding of guilty. The trial court ordered a deferred sentence for 18 months with the conditions contained upon the stipulation.

Following sentencing, Wilson obtained new counsel and filed a motion to vacate and to reinstate his right to a jury trial. He filed an affidavit reciting that he was advised by his attorney that by signing the stipulation he would be allowed to undertake counseling and to avoid a conviction, and that the trial court said nothing to him about his rights. The motion to vacate was denied but Wilson was granted leave to file a RALJ appeal even though the 14-day time for filing an appeal had expired. The RALJ court affirmed his conviction and he seeks discretionary review.

ISSUE

1. Should the requirements of CrRLJ 4.2 regarding pleas of guilty be extended to the stipulation?

2. Did the defendant receive ineffective assistance of counsel?

CRITERIA FOR DISCRETIONARY REVIEW

Discretionary review is only available:

(1) If the decision of the superior court is in conflict with a decision of the Court of Appeals or the Supreme Court: or

(2) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

(3) If the decision involves an issue of public interest which should be determined by an appellate court; or

(4) If the superior court has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by the court of limited jurisdiction, as to call for review by the appellate court.

DECISION

Issue 1. Wilson argues that the stipulation was a "stipulation of facts sufficient," and as used in district court practice is the functional equivalent of an **Alford***[1]* plea, and therefore should be subject to the same requirements of CrRLJ 4.2 that apply to guilty pleas. Wilson acknowledges that under current law the court is not required to insure that a stipulation is entered into knowingly and voluntarily. In ***State v. Johnson***, 104 Wn.2d 338, 342-3, 705 P.2d 773(1985), the court expressly rejected the argument that a stipulated facts trial was tantamount to a guilty plea and held that no advise of rights or colloquy was required. Subsequent cases continue to recognize the distinctions between stipulated facts trials and guilty pleas and that the requirements of CrR 4.2 do not apply to stipulated facts trials. See ***State v. Mierz***, 72 Wn. App. 783, 796, 866 P.2d 65, 875 P.2d 1228, ***review granted***, 125 Wn.2d 1007 (1994) ("A stipulated trial is fundamentally different from entering a guilty plea. Because these two procedures are not analogous, we hold that CrR 4.2, a rule that by its terms applies to guilty pleas, does not apply to a stipulated

[1] North Carolina v. Alford, 400 U.S. 25 (1970)

trial." (Footnote omitted.))

An ***Alford plea*** is a plea of guilty made when the defendant is unable or unwilling to admit that he participated in the acts constituting the crime. This form of guilty plea requires that the trial court take steps to confirm that the plea is knowing, intelligent and voluntary. ***In re Montoya***, 109 Wn.2d 270, 277, 744 P.2d 340 (1987). Wilson argues that the distinctions between ***Alford*** pleas and stipulations to facts has become blurred, especially in district court practice. There remains, however, a significant difference between admitting guilt and waiving any right to appeal and a stipulated facts trial in which the trial court determines guilt or innocence based upon the stipulated facts and the right to appeal is retained. While it is not clear how the stipulated facts trial operated any differently for Wilson than a guilty plea, the written stipulation signed by Wilson, clearly and unambiguously indicates that a stipulated facts trial will be conducted. The document is not tantamount to an ***Alford*** plea and CrRLJ 4.2 does not apply to the stipulation. The record presented in support of the motion for discretionary review reflects that after the stipulation was presented, the trial court entered a finding of guilty

based upon the police reports, not upon a guilty plea of Wilson. The trial court was not required to engage in the inquiry required by CrRLJ 4.2.

Issue 2. Wilson argues that he received ineffective assistance of counsel because he was not fully advised of the consequences of signing the stipulation and because his attorney did not negotiate a resolution that did not include a conviction upon his record.

To establish ineffective assistance of counsel, the defendant must meet a two-pronged test. ***Strickland v. Washington***, 466 U.S. 668, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984); ***State v. Thomas***, 109 Wn.2d 222, 743 P.2d 816 (1987). First, the defendant must show that counsel's performance was deficient. ***Strickland v. Washington, supra*** at 687; ***State V. Thomas, supra*** at 225. The quality of counsel's representation is determined by reference to "an objective standard of reasonableness based on consideration of all of the circumstances." ***State v. Thomas, supra*** at 226. Appellate review of counsel's performance is highly deferential and there is a strong presumption that the performance was reasonable.

State v. Bowerman, 115 Wn.2d 794, 808, 802 P.2d 116 (1990); *State v. Thomas, supra* at 226. If defense counsel's conduct can be characterized as a legitimate trial strategy or tactics, ineffective assistance will not be found. *State v. Mak*, 105 Wn.2d 692, 718 P.2d 407, *cert. denied,* 479 U.S. 995 (1986); *State v. Tarica*, 59 Wn. App. 368, 374, 798 P.2d 296 (1990).

If the defendant meets his burden of showing that his counsel's performance was deficient, the court then must consider whether the ineffective performance prejudiced the defense. *Strickland v. Washington, supra* at 687; *State v. Thomas, supra* at 225. To satisfy the prejudice prong of the test, the defendant must show that, "but for the ineffective assistance, there is a reasonable probability that the outcome would have been different". *State v. Bowerman, supra* at 808. A reviewing court is not required to address both prongs of the test if the defendant makes an insufficient showing on either prong. *State. V. Tarica, supra* at 374; *State v. Fredrick*, 45 Wn. App. 916, 729 P.2d 56 (1986).

Affirmatively misinforming a defendant of the collateral consequences of entering an **Alford** plea may constitute ineffective assistance prejudicial to the defendant, if the defendant shows a reasonable probability that, but for the errors of counsel, defendant would not have pled guilty and would have proceeded to trial. ***State v. Stowe***, 71 Wn. App. 182, 186, 858 P.2d 267 (1993).

Wilson presented his ineffective assistance arguments to the trial court upon his motion to vacate which was supported only be Wilson's Affidavit. The affidavit contains limited comments regarding the advice provided to Wilson at the time the stipulation was entered:

> *3. . . . [My attorney] advised me that I should take the prosecutor's offer and sign a form. He told me by signing this form, it would allow me to go through counseling and avoid a conviction. I did not understand all the provisions of the form, but I signed it anyway, relying upon his advice.*
>
> *4. On the day of trial, I felt very intimidated by the whole*

process. The court said nothing to me regarding my rights. specifically that I was entering a plea of guilty. I understand now that the plea I entered was an "Alford" plea, which allowed the Judge to make a finding of guilt based upon the police reports alone. I did not understand this at the time.

The record presented in support of discretionary review does not provide a complete record of what other material may have been presented to the trial court not any detailed findings of the trial court on the motion to vacate. The State's brief, does quote the trial court as finding that Wilson had not made an adequate showing that he did not understand the stipulation he signed. The only affirmative misinformation referred to in the affidavit was a statement by the attorney that by signing the form a conviction would be avoided. The bare allegation by Wilson that he did not understand what was set forth in the written stipulation does not establish that he received ineffective assistance of counsel. Based upon the limited record presented, Wilson has not established that the trial court erred in rejecting his claim of ineffective assistance of counsel.

Further, to the extent that Wilson argues that the "deal"

contained in the stipulation was not in his best interests, the stipulated facts trial resulted in a deferred sentence with the conviction to be removed from his record if Wilson complies with the conditions imposed. He faced the potential of substantially more severe penalties if he had gone to trial and lost, and the tactical agreement to the stipulated trial with the State's recommendation of a deferred sentence is not shown to be ineffective assistance of counsel. See ***generally Mierz***, 72 Wn. App. at 795 (stipulated trial procedure involving signature of defense attorney approving findings of fact and conclusions of law not ineffective assistance of counsel.) The stipulation is not tantamount to an ***Alford plea*** or a general guilty plea nor does the record reflect ineffective assistance of counsel. The criteria for discretionary review has not been satisfied. Now, therefore, it is hereby **ORDERED** that the motion for discretionary review is denied.

Done this 3rd day of April, 1995.

/s/ James M. Verellen
Court of Appeals Commissioner

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION ONE

STATE OF WASHINGTON	)	
	)	**No. 35842-1-I**
Respondent,	)	
	)	**ORDER DENYING**
vs.	)	**MOTION TO**
	)	**MODIFY**
WILLIAM P. WILSON,	)	
	)	
Appellant.	)	
	)	

William P. Wilson has filed a motion to modify the

comissioner's ruling granting a motion on the merits and affirming the decision of the trial court. A panel of this court has considered the matter pursuant to RAP 17.7 and *State v. Rolax*, 104 Wn.2d 129, 702 P.2d 1185 (1985), and has determined that the motion should be denied. Now, therefore, it is hereby

ORDERED that the motion to modify is denied.

Done this 2nd day of June, 1995.

/s/Walter E. Webster
Court of Appeals Judge

/s/Faye C. Kennedy
Court of Appeals Judge

/s/Walter E. Webster
Court of Appeals Judge

SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON	)	
	)	**NO. 62946-3**
Respondent,	)	
	)	**RULING**
vs.	)	**DENYING**
	)	**DISCRETIONARY**
WILLIAM P. WILSON,	)	**REVIEW**
	)	
Petitioner,	)	
	)	

William Wilson moves for discretionary review of the Court of Appeals refusal to review the Superior Court's decision in his RALJ appeal. RAP 2.3(d); RAP 13.5(b).

Mr. Wilson was charged in district court with fourth degree assault (domestic violence). On January 13, 1994, he signed a form submitting the case to the trial court on the record. The form says "I understand that this means that the judge will read the police report and other materials attached and, based on that evidence, the judge will decided if I am guilty" of the crime charged. It also says Mr. Wilson understood the maximum penalty for the crime was 1 year in jail, the court could impose any sentence up to the maximum, and the prosecutor had agreed to recommend an 18-month deferred sentence with active probation and counseling, after which the case would be dismissed. The trial court found that the materials submitted supported a finding of guilt, accepted the prosecutor's sentencing recommendation, and deferred imposition of sentence.

Mr. Wilson later moved to vacate what he characterized as an ***Alford [1]*** plea of guilty. The trial court denied this motion. Mr. Wilson then appealed to King county Superior Court, again claiming that he had entered an invalid ***Alford***

*[1] **North Carolina v. Alford,*** 400 U.S. 25, 27 (1970)

plea. That court held that Mr. Wilson did not plead guilty and affirmed the finding of guilt. Mr. Wilson moved for discretionary review in Division One of the Court of Appeals. Commissioner Verellen denied this motion, and the court declined to modify the commissioner's ruling.

I agree with the courts below the Mr. Wilson did not enter an ***Alford*** plea to the assault charge. An ***Alford*** plea is a type of guilty plea. ***See In re Montoya***, 109 Wn.2d 270, 744 P.2d 340 (1987). As with any guilty plea, an ***Alford*** plea, once accepted, leaves nothing for the court to do but enter judgment. It also waives both the defendant's trial rights and the right to appeal almost all legal issues. ***Id.; see State v. Johnson***, 104 Wn.2d 338, 705 P.2d 773 (1985) (comparing guilty pleas and stipulations). Mr. Wilson simply stipulated that the court could determine his guilt or innocence based on the police reports and other evidence submitted on the record. He did not, as he claims, stipulate that this evidence was sufficient to support a finding of guilt. The court made that determination for itself.

To be sure, the stipulation here was somewhat different from the "stipulated facts trial" this court addressed in ***Johnson***; the latter did not preclude the defendant from presenting evidence or cross-examining the state's witnesses. See ***State v. Johnson, supra***. Nevertheless, like the defendant in ***Johnson***, Mr. Wilson preserved his right to appeal and did not admit that the State's evidence supported a finding of guilt. These factors relevantly distinguish Mr. Wilson's stipulation from a guilty plea. Moreover, Mr. Wilson signed a form stating he understood he was waiving his trial rights. He also acknowledged an understanding of the sentencing consequences of a finding of guilt. Thus, to the extent the stipulation was similar to a guilty plea, the procedures necessary to ensure voluntariness were satisfied.

Mr. Wilson also contends that his trial counsel represented to him ineffectively by telling him that the stipulation would not result in a conviction. That advice, though perhaps incomplete, was nevertheless correct; if Mr. Wilson complies with the terms with his probation, the charge

will be dismissed and he will have no criminal record.

In sum, the Superior Court's RALJ decision does not warrant review under RAP 2.3(d), nor therefore has Mr. Wilson shown that review by this court is merited under RAP 13.5(b). His motion for discretionary review is denied.

/s/ Geoffrey Crooks
Supreme Court Commissioner

August 11, 1995

THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	**No. 62946-3**
Respondent,	)	
	)	**ORDER**
v.	)	
	)	**C/A No. 35842-1-I**
WILLIAM P. WILSON,	)	
	)	
Petitioner.	)	
	)	

All five members of Department I of the Court considered the matters set on its October 3, 1995, Motion Calendar, the files herein and unanimously agreed that the following order be entered. Therefore, Chief Justice Barbara Durham directed that this order be entered:

IT IS ORDERED:

That Petitioner's Motion to Modify Commissioner's Ruling is denied.

I CERTIFY THAT THIS ORDER WAS ENTERED BY THE COURT ON THIS 4TH DAY OF OCTOBER, 1995.

/s/ C.J. Merritt
C.J. MERRITT
SUPREME COURT CLERK

DECLARATION OF HOLLY BENSON

I, Holly Benson, declare as follows:

I am the legal assistant for Joan E. Neuffer, Counsel of Record. I have prepared all documents contained within the Appendix for the Petition for Writ of Certiorari, which were a part of the record below.

I have retyped true and accurate copies of each document as they appeared from the original documents, as follows:

1. **Stipulation to Facts Sufficient**, Jan. 13, 1994
2. **Record of Proceedings**, Jan. 13, 1994
3. **Decision on RALJ Appeal**, Dec.5, 1995
4. **Commissioner's Ruling Denying Motion for Discretionary Review**, April 3, 1995
5. **Judge's Ruling Denying Motion to Modify**, June 2, 1995

Appendix
Declaration of Holly Benson

6. **SC Commissioner's Ruling Denying Review**, August 11, 1995
7. **SC Judge's Ruling Denying Review**, Oct. 4, 1995

I SWEAR UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Dated this 11th day of December, 1995.

Holly Benson

Holly Benson
Legal Assistant

Appendix
Declaration of Holly Benson